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~~10/1/79~~

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 10:00 A.M.
TUESDAY, MAY 8, 1979

STATEMENT OF CLIFFORD I. GOULD, DEPUTY DIRECTOR
FEDERAL PERSONNEL AND COMPENSATION DIVISION

BEFORE THE

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

~~DLG00166~~ ON *DLG00028*
THE [MERIT SYSTEMS PROTECTION BOARD AND
OFFICE OF SPECIAL COUNSEL]
DLG00084

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

WE APPRECIATE YOUR INVITATION TO APPEAR HERE TODAY TO DISCUSS OUR OVERSIGHT OF THE ACTIVITIES OF THE MERIT SYSTEMS PROTECTION BOARD AND THE OFFICE OF SPECIAL COUNSEL. AS YOU KNOW, THE CIVIL SERVICE REFORM ACT OF 1978 REQUIRES GAO TO PREPARE AND SUBMIT AN ANNUAL REPORT TO THE PRESIDENT AND THE CONGRESS ON THE ACTIVITIES OF THE BOARD AND SPECIAL COUNSEL IN CARRYING OUT THEIR FUNCTIONS. ALSO, THIS COMMITTEE HAS REQUESTED OUR ASSISTANCE IN PROVIDING OVERSIGHT OF THE TRANSITION AND ESTABLISHMENT OF THE BOARD. AS A RESULT, WE HAVE ESTABLISHED AN AUDIT TEAM LOCATED AT THE BOARD AND WILL SOON BEGIN EXAMINING THE FIELD OPERATIONS OF BOTH THE BOARD AND SPECIAL COUNSEL.



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THE BOARD AND SPECIAL COUNSEL WERE ESTABLISHED ON JANUARY 1, 1979, BY THE PRESIDENT'S REORGANIZATION PLAN NUMBER 2 OF 1978. THE PLAN TRANSFERRED TO THE BOARD THE ADJUDICATORY, APPELLATE AND CERTAIN MERIT SYSTEMS ENFORCEMENT FUNCTIONS PREVIOUSLY PERFORMED BY THE CIVIL SERVICE COMMISSION. ALSO TRANSFERRED WERE THOSE PERSONNEL, FUNDS, AND OTHER RESOURCES RELATED TO THE FUNCTIONAL TRANSFERS UNDER THE REORGANIZATION PLAN. A TOTAL OF 289 POSITIONS WERE INITIALLY TRANSFERRED TO THE BOARD AND 19 POSITIONS TO THE SPECIAL COUNSEL TO PERFORM THESE FUNCTIONS. OF THE POSITIONS TRANSFERRED 25 AND 5, RESPECTIVELY, WERE VACANT. SUBSEQUENTLY, THE FUNCTIONS AND RESPONSIBILITIES OF THE BOARD AND SPECIAL COUNSEL WERE EXPANDED AND STRENGTHENED UNDER THE CIVIL SERVICE REFORM ACT OF 1978, WHICH TOOK EFFECT ON JANUARY 11, 1979.

THE NEW FUNCTIONS AND RESPONSIBILITIES ASSIGNED TO THE BOARD AND SPECIAL COUNSEL INCLUDE:

- CONDUCTING SYSTEMATIC REVIEWS AND ANALYSES OF THE FEDERAL MERIT SYSTEMS AND REPORTING THE RESULTS TO THE PRESIDENT AND CONGRESS ON WHETHER SUCH SYSTEMS ARE FREE FROM PROHIBITED PERSONNEL PRACTICES AND OTHER MERIT ABUSES;
- REVIEWING RULES AND REGULATIONS ISSUED BY THE OFFICE OF PERSONNEL MANAGEMENT; AND

--PROTECTING WHISTLEBLOWERS FROM REPRISALS FOR DIS-
CLOSING VIOLATIONS] OF LAW, RULE OR REGULATION, OR OF
MISMANAGEMENT, A GROSS WASTE OF FUNDS, AN ABUSE OF
AUTHORITY, OR A SUBSTANTIAL AND SPECIFIC DANGER TO
PUBLIC HEALTH OR SAFETY.

SINCE NO ADDITIONAL PERSONNEL OR FUNDS WERE MADE AVAIL-
ABLE TO CARRY OUT THESE ADDITIONAL NEW FUNCTIONS AND EXPANDED
RESPONSIBILITIES, THE BOARD HAS ASKED THE PRESIDENT AND THE
CONGRESS FOR 102 ADDITIONAL POSITIONS FOR FISCAL YEAR 1979,
AND ADDITIONAL FUNDING OF ~~\$1,426,000~~^{\$2,268,000}. OF THIS REQUEST,
43 POSITIONS AND \$842,000 WILL BE FOR THE SPECIAL COUNSEL
OPERATIONS. THE BOARD CONSIDERS THE REQUESTED 1979 SUPPLE-
MENTAL AMOUNT AS THE MINIMUM LEVEL NECESSARY FOR THE BOARD
AND SPECIAL COUNSEL TO ADEQUATELY IMPLEMENT THEIR OPERATIONS.

IN OUR APRIL 20, 1979, LETTER TO YOU, WE STATED THAT
WITH THEIR PRESENT STAFFING AND FUNDING, THE BOARD AND
PARTICULARLY THE SPECIAL COUNSEL DO NOT HAVE ADEQUATE RE-
SOURCES TO ESTABLISH FULL OPERATIONS AND EFFECTIVELY CARRY
OUT THE DUTIES AND RESPONSIBILITIES ASSIGNED TO THEM UNDER
THE CIVIL SERVICE REFORM ACT. WHILE OUR STUDY OF THE
BOARD'S AND SPECIAL COUNSEL'S BUDGET, STAFFING, AND OPERA-
TIONS WAS NOT OF THE NATURE TO DETERMINE WHAT THEIR SPECIFIC
NEEDS SHOULD BE, WE BELIEVE IT IS CLEAR THAT ADDITIONAL
RESOURCES ARE NEEDED IF THE BOARD AND SPECIAL COUNSEL ARE
EXPECTED TO DO THOSE THINGS ASSIGNED TO THEM. IN THIS LIGHT,

IT IS INTERESTING TO NOTE THAT CONGRESSWOMAN SCHROEDER INTRODUCED TWO BILLS, H.R. 3751 AND H.R. 3752 ON APRIL 25, 1979, WHICH, IF ENACTED WOULD PLACE THESE AGENCIES UNDER PERIODIC AUTHORIZATION. H.R. 3752 WOULD ALSO SIGNIFICANTLY INCREASE THE RESOURCES OF BOTH THE BOARD AND SPECIAL COUNSEL. CONGRESSWOMAN SCHROEDER STATED THAT ADDITIONAL RESOURCES ARE NEEDED IN ORDER TO ADEQUATELY POLICE THE FEDERAL MERIT SYSTEMS.

WITHOUT ADEQUATE STAFF AND RESOURCES WE DO NOT BELIEVE THAT THE SPECIAL COUNSEL CAN TIMELY REVIEW AND INVESTIGATE COMPLAINTS AND ALLEGATIONS OF WRONGDOING, INITIATE INDEPENDENT INVESTIGATIONS OF POSSIBLE PROHIBITED PERSONNEL PRACTICES, ESTABLISH FIELD OFFICES NOR PERFORM NECESSARY MANAGEMENT AND REGULATORY FUNCTIONS. CURRENTLY, THE SPECIAL COUNSEL HAS A PROFESSIONAL STAFF OF SEVEN ATTORNEYS AND SIX INVESTIGATORS. FIELD OPERATIONS HAVE YET TO BE ESTABLISHED AND, AS WE REPORTED TO YOU, APPROXIMATELY 80 PERCENT OF THE COMPLAINTS AND ALLEGATIONS BEING RECEIVED BY THE SPECIAL COUNSEL ARE FROM OUTSIDE THE WASHINGTON, D.C. AREA.

WITH PRESENT RESOURCES, THE SPECIAL COUNSEL ESTIMATES THAT IT CAN PROCESS ONLY ABOUT 10 PERCENT OF THE COMPLAINTS AND ALLEGATIONS RECEIVED. WE BELIEVE IN ORDER FOR THE SPECIAL COUNSEL TO BE EFFECTIVE AND ESTABLISH ITS CREDIBILITY IN PROVIDING MEANINGFUL PROTECTION TO FEDERAL EMPLOYEES AGAINST WHISTLEBLOWING REPRISALS, POLITICAL COERCION AND

ABUSES, AND OTHER PROHIBITED PERSONNEL PRACTICES, THE SPECIAL COUNSEL CRITICALLY NEEDS ADDITIONAL RESOURCES.

THE BOARD, LIKE THE SPECIAL COUNSEL, DOES NOT HAVE THE RESOURCES NECESSARY TO EFFECTIVELY CARRY OUT THE FULL RANGE OF ITS STATUTORY FUNCTIONS AND RESPONSIBILITIES. WITHOUT ADEQUATE RESOURCES THE BOARD MAY BE UNABLE TO ESTABLISH ITS CREDIBILITY AND DO ITS JOB EFFECTIVELY. THE IMPORTANT FUNCTION OF FEDERAL MERIT SYSTEM OVERSIGHT HAD NOT BEEN STAFFED OR IMPLEMENTED AND OTHER PROGRAM FUNCTIONS SUCH AS ITS LITIGATION AND SUBPOENA ENFORCEMENT AUTHORITY ARE UNDERSTAFFED. ALSO, THE LARGE BACKLOG OF CASES CARRIED OVER FROM THE FORMER FEDERAL EMPLOYEE APPEALS AUTHORITY AND APPEALS REVIEW BOARD PLACES AN ADDITIONAL BURDEN ON THE BOARD'S RESOURCES. AS OF APRIL 21, 1979, APPROXIMATELY 3,800 OF THESE CASES WERE PENDING BEFORE THE BOARD. UNDER THE CIVIL SERVICE REFORM ACT, CASES BEFORE THE BOARD INVOLVING DISCRIMINATION MUST BE DECIDED WITHIN 120 DAYS. THE BOARD HAS ALSO ANNOUNCED A 120 DAY GOAL FOR PROCESSING ALL OTHER NEW APPEALS. BECAUSE OF THIS, THE BOARD IS PLACING PRIORITY FIRST ON HANDLING NEW APPEALS INVOLVING DISCRIMINATION AND SECOND ON OTHER NEW CASES UNDER THE REFORM ACT. AS A RESULT, DECISIONS ON OLD CASES ARE LIKELY TO BE FURTHER DELAYED.

PROBLEM WITH OFFICE SPACE

IN A LETTER TO THE GENERAL SERVICES ADMINISTRATION ON MARCH 23, 1979, THE BOARD LISTED SEVERAL PROBLEMS WITH ITS EXISTING OFFICE SPACE AND FACILITIES LOCATED AT THE MATOMIC BUILDING, 1717 H. STREET N.W. WASHINGTON, D.C. ACCORDING TO THE BOARD, THESE PROBLEMS HAVE INHIBITED THEIR INITIAL OPERATIONS AND MAY VIOLATE APPLICABLE REGULATIONS. THESE PROBLEMS INCLUDE:

- LACK OF SECURITY NECESSARY FOR THE BOARD TO HEAR SENSITIVE CASES AND CONDUCT INVESTIGATIONS.
- LACK OF ADEQUATE HEARING ROOM FACILITIES, CONFERENCE ROOMS, AND LIBRARY SPACE.
- INADEQUATE ELECTRICAL WIRING.
- HEATING AND COOLING SYSTEMS WHICH DO NOT APPEAR TO MEET THE GENERAL SERVICES ADMINISTRATION'S REGULATIONS.

ALTHOUGH THE BOARD HAS BEEN GIVEN APPROVAL TO REHABILITATE THE OFFICE SPACE, IT QUESTIONS THE SOUNDNESS OF EXPENDING HUNDREDS OF THOUSANDS OF DOLLARS TO RENOVATE SPACE WHICH IT FEELS IS INHERENTLY DEFICIENT AND WOULD DISRUPT THE BOARD'S ACTIVITIES FOR SEVERAL MONTHS.

WE BELIEVE THIS MAY BE A MATTER THE COMMITTEE MIGHT WISH TO PURSUE WITH THE BOARD AND THE GENERAL SERVICES ADMINISTRATION. THE IMMEDIATE RESOLUTION OF THIS MATTER WILL ENABLE THE BOARD TO GET ON WITH ITS JOB.

GAO'S ROLE AND WHAT WE ARE DOING

GAO IS REQUIRED BY THE CIVIL SERVICE REFORM ACT TO PREPARE AN ANNUAL REPORT ON THE ACTIVITIES OF THE BOARD INCLUDING THE SPECIAL COUNSEL.

OUR OVERALL STRATEGY IN MONITORING AND EVALUATING THE BOARD AND SPECIAL COUNSEL ENCOMPASSES THEIR FUNCTIONAL OPERATIONS AND RESPONSIBILITIES, AND THE ORGANIZATION, POLICIES AND PROCEDURES ESTABLISHED TO CARRY THEM OUT. IN SO DOING, WE HOPE TO PROVIDE OVERSIGHT ON ALL ASPECTS OF THE BOARD AND SPECIAL COUNSEL'S OPERATIONS. BRIEFLY SOME OF THE SPECIFIC AREAS, ISSUES AND QUESTIONS WE PLAN TO ADDRESS ARE:

- PROGRESS OF THE BOARD IN PROVIDING TIMELY CONSIDERATION OF EMPLOYEE APPEALS. IS THE 120 DAY TIMEFRAME FOR PROCESSING ALL APPEALS REALISTIC?
- CAN THE BOARD, AS ESTABLISHED, OPERATE IN AN INDEPENDENT MANNER?
- WHAT PROCEDURES AND ARRANGEMENTS WILL BE DEVELOPED FOR COORDINATION WITH OPM, FLRA, EEOC, AND OTHER AGENCIES?
- PROGRESS OF THE SPECIAL COUNSEL IN TIMELY RESPONDING TO ALLEGATIONS AND COMPLAINTS.
- COORDINATION BETWEEN THE SPECIAL COUNSEL AND AGENCY INSPECTOR GENERAL'S AND OTHERS AS MAY BE REQUIRED IN THE INVESTIGATION OF WHISTLEBLOWER ALLEGATIONS.

--HOW CAN THE SPECIAL COUNSEL BE ASSURED OF THE REASON-
ABleness AND ACCURACY OF AGENCY REPORTS REQUIRED BY
HIM ON WHISTLE BLOWER COMPLAINTS AND ALLEGATIONS?

--ARE THE BOARD'S AND SPECIAL COUNSEL'S OPERATIONS
AND PROCEDURES CONSISTENT WITH LEGISLATIVE INTENT?
ARE THE PROCESSES TOO LEGALISTIC AND FORMAL?

ALTHOUGH WE WILL BE REPORTING ANNUALLY ON THE BOARD'S
ACTIVITIES, WE ENVISION THAT AS PROBLEMS OR ISSUES ARISE WE
WILL BRING THEM TO THE ATTENTION OF THE BOARD, THE SPECIAL
COUNSEL AND TO THE CONGRESS AS WE HAVE DONE WITH RESPECT TO
THE CURRENT FUNDING AND STAFFING SITUATION. ALSO, AS PART
OF OUR OVERSIGHT ACTIVITIES, WE WILL CONTINUE TO PERIODICALLY
MEET WITH MEMBERS OF YOUR STAFF TO BRIEF THEM ON THE PROGRESS
AND STATUS OF OUR WORK.

THIS COMPLETES MY PREPARED TESTIMONY. I WILL BE PLEASED
TO RESPOND TO ANY QUESTIONS THE COMMITTEE MAY HAVE.